IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4169 OF 2005

M/s.P.D.Jain & Bros.).. Petitioners

Versus

Vasant Pranvallabh and others).. Respondents

Mr.Uday Bobde i/b.M/s.Kukreja & Co. for the Petitioners.

Mr.S.J.Ghatge for Respondent No.1.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 12TH JULY 2005

P.C.:

. The Petition challenges the order dated 2nd April 2005 passed by the Appellate Court of the Court of Small Causes at Bombay in Appeal No.99 of 1999 allowing the Appeal of the Respondents. The Appellate Court has found that the Petitioners changed the user of the suit premises from shop to godown and also that the suit premises were not used for the purpose for which they were let out for a continuous period of six months immediately preceding the date of filing of the Suit. The Petitioners had also acquired alternate accommodation. The Appellate Court has rightly, in my view, concluded that change of user of the premises from shop to godown amounted to change of user. The Appellate Court has considered the relevant documents on record and

has concluded that the Petitioners were using some other premises as their shop. The suit premises were being used only to store their goods. The Appellate Court has allowed the Appeal and held that the ground for ejectment under Section 13(1)(a) of the Bombay Rent Act, 1947 has been made out. I see no reason to interfere with the findings of the Appellate Court.

2. Reliance is placed on the judgment of the Gujarat High Court in the case of *Mahmad Umar Abdul Rahim Narmavala and others* vs. *Shah Manilal Gokaldas, (a firm) and others*, **1968 Gujarat Law Reporter (Vol.IX) 104**, to submit that using the suit premises as a godown and not a shop, as was the case earlier, does not constitute change of user as the change was not destructive. However, this judgment is of no avail to the Petitioners since the Division Bench of this Court in the case of *Bright Brothers (Pvt.) Ltd.* vs. *Venkatlal G. Pittie*, **1970 Bombay Law Reporter (Vol.LXXXI) 315**, has not approved of the same and has taken a contrary view.

3. Writ Petition dismissed.

4. On the request of Mr.Bobde, learned Advocate for the Petitioners, the execution of the decree is stayed for eight weeks on condition that the Petitioners file the usual undertaking in this Court within two weeks from

today.